

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. _____

UNITED STATES OF AMERICA

vs.

PETER LOMBARDI,

Defendant.

_____ /

PLEA AGREEMENT

The United States Attorney's Office for the Southern District of Florida ("Office") and PETER LOMBARDI (hereinafter referred to as the "defendant") enter into the following agreement:

1. The defendant agrees to plead guilty to a one-count Information, which charges the defendant with Securities Fraud, in violation of 15 U.S.C. Sections 78j(b), 78ff(a) and 17 C.F.R. Section 240.10b-5. The defendant also agrees to appear for an initial appearance on such information before a federal magistrate judge in Miami, Florida on any date designated by this Office, and agrees to waive in open court his right to prosecution by indictment for this offense.

2. The defendant is aware that the sentence will be imposed by the court after considering the Federal Sentencing Guidelines and Policy Statements (hereinafter "Sentencing Guidelines"). The defendant acknowledges and understands that the court will compute an advisory sentence under the Sentencing Guidelines and that the applicable guidelines will be determined by the court relying in part on the results of a Pre-Sentence Investigation by the court's probation office, which

investigation will commence after the guilty plea has been entered. The defendant is also aware that, under certain circumstances, the court may depart from the advisory sentencing guideline range that it has computed, and may raise or lower that advisory sentence under the Sentencing Guidelines. The defendant is further aware and understands that the court is required to consider the advisory guideline range determined under the Sentencing Guidelines, but is not bound to impose that sentence; the court is permitted to tailor the ultimate sentence in light of other statutory concerns, and such sentence may be either more severe or less severe than the Sentencing Guidelines' advisory sentence. Knowing these facts, the defendant understands and acknowledges that the court has the authority to impose any sentence within and up to the statutory maximum authorized by law for the offense(s) identified in paragraph 1 and that the defendant may not withdraw the plea solely as a result of the sentence imposed.

3. The defendant also understands and acknowledges that the court may impose a statutory maximum term of imprisonment of up to (20) years, followed by a term of supervised release of up to three (3) years. In addition to a term of imprisonment and supervised release, the Court may impose a maximum fine of \$5 million.

4. Restitution: The defendant understands that restitution under Title 18, United States Codes, Section 3663A is mandatory and he agrees that the restitution required as a result of the criminal conduct described in the Information is approximately \$966 million. The defendant also agrees that offenses, including but not limited to mail and wire fraud, listed under Title 18, United States Code, Section 3663A(c)(1) were committed by him as part of the fraud scheme underlying the offense of conviction and that those offenses gave rise to this plea agreement. The defendant further agrees, as permitted by Title 18, United States Code, Section 3663A(a)(3), that restitution

payable by him shall be payable for the full amount of the loss arising from the relevant conduct related to this matter, not just from the offense of conviction.

5. The defendant further understand and acknowledges that, in addition to any sentence imposed under paragraph 3 of this agreement, a special assessment in the amount of \$100.00 will be imposed on the defendant. The defendant agrees that any special assessment imposed shall be paid by the time of sentencing.

6. The Office reserves the right to inform the Court and Probation of all facts pertinent to the sentencing process, including all relevant information concerning the offenses committed, whether charged or not, as well as concerning the defendant and the defendant's background. Subject only to the express terms of any agreed-upon sentencing recommendations contained in this agreement, this Office further reserves the right to make any recommendation as to the quality and quantity of punishment.

7. The United States and the defendant agree that, although not binding on the probation office or the court, they will jointly recommend that the court impose a sentence within the advisory sentencing guideline range produced by application of the Sentencing Guidelines. Although not binding on the probation office or the court, the United States and the defendant further agree that, except as otherwise expressly contemplated in this Plea Agreement, they will jointly recommend that the court neither depart upward nor depart and or vary downward under the Sentencing Guidelines when determining the advisory sentencing guideline range in this case.

8. This Office and the defendant agree that, although not binding on Probation or the Court, they will jointly recommend that the Court make the following findings and conclusions as to the sentence to be imposed on the count to which the defendant shall plead:

- a. Applicable Guidelines Manual: The United States Sentencing Commission Guidelines Manual for 2003, *i.e.*, the Guidelines Manual incorporating amendments effective through November 1, 2003, governs the defendant's sentencing in this case.
- b. Applicable Guideline Offense and Base Offense Level: Pursuant to Section 2B1.1 of the Sentencing Guidelines, the offense guideline applicable to the defendant's offense is Section 2B1.1(a)(1) of the Sentencing Guidelines, which provides for a base offense level of seven (7) because the defendant will plead guilty to securities fraud, which carries a maximum term of imprisonment of twenty (20) years or more.
- c. Specific Offense Characteristics: The parties agree and stipulate that the following offense characteristics apply under Section 2B1.1(b):
 - (i) Loss - the amount of loss suffered by investors is more than \$400 million.
 - (ii) Victims - the offense involved over 250 victims
 - (iii) Sophisticated Means - the offense involved sophisticated means.
- d. Role: This Office and the defendant agree that, pursuant to Section 3B1.1(b), the defendant was a manager or supervisor (but not an organizer or leader) of the criminal activity set forth in Count One of the Information, and that such activity involved five or more participants or was otherwise extensive, resulting in a three (3) level increase.
- e. This agreement resolves the defendant's federal criminal liability in the Southern District of Florida growing out of any criminal conduct by the

defendant known to the United States Attorney's Office for the Southern District of Florida as of the date of this plea agreement, including but not limited to the scheme described in the Information and any healthcare fraud he committed at the Community Healthcare/CenterOne clinic or any campaign contribution fraud he may have committed at MBC during the years 1994 through 2004. This agreement excludes Title 26 offenses and crimes of violence. As of the date of this agreement, there are no other criminal charges being investigated or contemplated against the defendant, other than those described in this agreement, by the United States Attorney's Office for the Southern District of Florida.

9. Acceptance of Responsibility: This Office agrees that, although not binding on Probation or the Court, that the court reduce by two levels the sentencing guideline level applicable to the defendant's offense, pursuant to Section 3E1.1(a) of the Sentencing Guidelines, based upon the defendant's recognition and affirmative and timely acceptance of personal responsibility. If at the time of sentencing the defendant's offense level is determined to be 16 or greater, the government will make a motion requesting an additional one level decrease pursuant to Section 3E1.1(b) of the Sentencing Guidelines, stating that the defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently. The United States, however, will not be required to make this motion and these recommendations if the defendant: (1) fails or refuses to make a full, accurate and complete disclosure to the probation office of the circumstances surrounding the

relevant offense conduct; (2) is found to have misrepresented facts to the government prior to entering into this plea agreement; or (3) commits any misconduct after entering into this plea agreement, including but not limited to committing a state or federal offense, violating any term of release, or making false statements or misrepresentations to any governmental entity or official.

10. The defendant is aware that the sentence has not yet been determined by the Court. The defendant also is aware that any estimate of the probable sentencing range or sentence that the defendant may receive, whether that estimate comes from the defendant's attorney, this Office, or Probation, is a prediction, not a promise, and is not binding on this Office, Probation or the Court. The defendant understands further that any recommendation that this Office makes to the Court as to sentencing, whether pursuant to this agreement or otherwise, is not binding on the Court and the Court may disregard the recommendation in its entirety. The defendant understands and acknowledges, as previously acknowledged in paragraph 2 above, that the defendant may not withdraw his/her plea based upon the Court's decision not to accept a sentencing recommendation made by the defendant, this Office, or a recommendation made jointly by both the defendant and this Office.

11. In the event the defendant withdraws from this agreement prior to pleading guilty to the charges identified in paragraph 1 above, otherwise fails to fully comply with any of the terms of this plea agreement, or withdraws his plea at any time, this Office will be released from its obligations under this agreement, and the defendant agrees and understands that (1) he thereby waives any protection afforded by Section 1B1.8 of the Sentencing Guidelines, Rule 11(f) of the Federal Rules of Criminal Procedure, and Rule 410 of the Federal Rules of Evidence, and that any statements made by him as part of plea discussions, any debriefings or interviews, or in this

agreement, whether made prior to or after the execution of this agreement, will be admissible against him without any limitation in any civil or criminal proceeding brought by the government; and (2) the defendant's waiver of any defense based on the statute of limitations or any other defense based on the passage of time in filing an indictment or information, referred to in this agreement, and all of his other obligations under this agreement shall remain in full force and effect; (3) the defendant stipulates to the admissibility and authenticity, in any case brought by the United States in any way related to the facts referred to in this agreement, of any documents provided by the defendant or his representatives to the Internal Revenue Service and/or this Office.

12. The defendant hereby knowingly and voluntarily waives any defense based on the statute of limitations or any other defense based on the passage of time in filing an indictment or information against the defendant with respect to any criminal offenses in connection with the defendant's criminal conduct under the Information.

13. This Office represents that the undersigned prosecutor is unaware of any information establishing the factual innocence of the defendant in the offense referred to in paragraph 1 of this agreement. This Office understands it has a continuing duty to provide such information establishing factual innocence of the defendant. The defendant understands that if this case proceeded to trial, this Office would be required to provide impeachment information relating to any informants or other witnesses. In addition, if the defendant raised an affirmative defense, this Office would be required to provide information in its possession that supports such a defense. Further, if this case proceeded to trial, this Office would be required to provide other information and materials in accordance with Fed. R. Crim. P. 16 and the Southern District of Florida's Standing Discovery Order. In return for the Government's promises set forth in this agreement, the defendant waives the

right to receive in discovery any such information and materials other than information and materials establishing the factual innocence of the defendant, and agrees not to attempt to withdraw the guilty plea or to file a collateral attack based on the existence of such information and materials other than information and materials establishing the factual innocence of the defendant.

14. The defendant is aware that Title 18, United States Code, Section 3742 affords the defendant the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the undertakings made by this Office in this plea agreement, the defendant hereby waives all rights conferred by Section 3742 to appeal any sentence imposed, including any restitution order, or to appeal the manner in which the sentence was imposed, or to collaterally attack the conviction pursuant to Title 28, United States Code, Sections 2255, 2254, 2241 or any other applicable provision, unless the sentence exceeds the maximum permitted by statute or is the result of an upward departure from the guideline range that the Court establishes at sentencing. The defendant further understands that nothing in this agreement shall affect the government's right and/or duty to appeal as set forth in Title 18, United States Code, Section 3742(b). However, if this Office appeals the defendant's sentence pursuant to Section 3742(b), the defendant shall be released from the above waiver of appellate/collateral attack rights. By signing this agreement, the defendant acknowledges that she has discussed the appeal/collateral attack waiver set forth in this agreement with her attorney. The defendant further agrees, together with this Office, to request that the district court enter a specific finding that the defendant's waiver of her right to appeal or to collaterally attack the conviction or sentence to be imposed in this case was knowing and voluntary.

15. This Office agrees that it will not seek additional upward specific offense characteristics, enhancements, or upward departures to or from the defendant's offense level beyond

those, if any, specifically referred to in this agreement, except that this Office shall have the right in its discretion to seek additional upward specific offense characteristics, enhancements, or upward departures to or from the defendant's offense level beyond those, if any, specifically referred to in this agreement where any such additional upward specific offense characteristics, enhancements, or upward departures to or from the defendant's offense level would be based on conduct occurring after the defendant enters into this agreement. The defendant agrees that he will not seek additional downward specific offense characteristics, reductions, or downward departures to or from the defendant's offense level beyond those, if any, specifically referred to in this agreement. However, in the event the Probation Office recommends any specific offense characteristics, enhancements, reductions, or departures to or from the defendant's offense level other than those, if any, specifically referred to in this agreement, either party shall have the right but not the obligation to oppose any such recommendation.

16. The defendant agrees that he shall cooperate fully with this Office by:

a. providing truthful and complete information and testimony, and producing documents, records and other evidence, when called upon by this Office, whether in interviews, before a grand jury, or at any trial or other court proceeding;

b. appearing at such grand jury proceedings, hearings, trials, and other judicial proceedings, and at meetings, as may be required by this Office;

c. if requested by this Office, working in an undercover role to contact and negotiate with others suspected and believed to be involved in criminal misconduct, under the supervision of, and in compliance with, law enforcement officers and agents,

d. in providing information and testimony, he will not seek to protect any person or entity through false information or omission, and will not falsely implicate any person or entity.

17. The defendant also understands and agrees that he will not commit any further crimes. The defendant further understands that he may be prosecuted for, without limitation, any materially false statement made at any time during his cooperation with the United States, including under the federal perjury, obstruction of justice, and false statements statutes.

18. In addition, should the defendant falsely implicate or incriminate any person, or should the defendant fail to voluntarily and reasonably disclose all information and provide full and complete cooperation, which determinations are within the sole discretion of the United States, this Agreement is voidable at the option of the United States, and the following conditions shall then also apply:

a. The defendant may be prosecuted for perjury or false statements, if any, committed while testifying pursuant to this Agreement or for obstruction of justice should he commit these offenses during the time in which he is cooperating with law enforcement pursuant to this Agreement;

b. The United States may use against the defendant his own admissions and statements and the information, books, papers, documents and objects that he himself has furnished in the course of his cooperation with the United States.

19. This Office reserves the right to evaluate the nature and extent of the defendant's cooperation and to make the defendant's cooperation, or lack thereof, known to the court at the time of sentencing. If in the sole and unreviewable judgment of this Office the defendant's cooperation is of such quality and significance to the investigation or prosecution of other criminal matters as to

warrant the court's downward departure from the sentence required by the Sentencing Guidelines, this Office may at or before sentencing make a motion pursuant to Title 18, United States Code, Section 3553(e), Section 5K1.1 of the Sentencing Guidelines, or Rule 35 of the Federal Rules of Criminal Procedure subsequent to sentencing, reflecting that the defendant has provided substantial assistance and recommending sentence reduction. The defendant acknowledges and agrees, however, that nothing in this Agreement may be construed to require this Office to file such a motion and that this Office's assessment of the nature, value, truthfulness, completeness, and accuracy of the defendant's cooperation shall be binding on the defendant.

20. The defendant understands and acknowledges that the court is under no obligation to grant a government motion pursuant to Title 18, United States Code, Section 3553(e), 5K1.1 of the Sentencing Guidelines or Rule 35 of the Federal Rules of Criminal Procedure, as referred to in this agreement, should the government exercise its discretion to file such a motion.

21. This is the entire agreement and understanding between this Office and the defendant. There are no other agreements, promises, representations, or understandings.

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Date: _____

By: _____
ANDREW K. LEVI
ASSISTANT UNITED STATES ATTORNEY

Date: _____

By: _____
RYAN DWIGHT O'QUINN
SPECIAL ASSISTANT UNITED STATES ATTORNEY

Date: _____

By: _____
JON MAY

ATTORNEY FOR DEFENDANT

Date: _____

By: _____
PETER LOMBARDI
DEFENDANT